

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RUSSELL ALAN MITCHELL, #376292,)	
Petitioner,)	
)	
v.)	3:07-CV-0443-D
)	
NATHANIEL QUARTERMAN, Director,)	
Texas Department of Criminal Justice,)	
Correctional Institutions Division,)	
Respondent.)	

ORDER OF THE COURT ON THE FOREGOING RECOMMENDATION

Considering the record in this case and the above recommendation, and pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253 (c), the Court hereby finds and orders:


IFP STATUS:

- (X) the party appealing is GRANTED *in forma pauperis* status on appeal.
- () the party appealing is proceeding *in forma pauperis*.
- () the party appealing is DENIED *in forma pauperis* status on appeal for the following reasons:
 - () the Court certifies, pursuant to Fed. R. App. P. 24(a) and 28 U.S.C. § 1915 (a)(3), that the appeal is not taken in good faith. In support of this finding, the Court adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation entered in this case on _____. Based upon the Magistrate Judge's findings, this Court finds that the appeal presents no legal points of arguable merit and is therefore frivolous. *See Harkins v. Roberts*, 935 F. Supp. 871, 873 (S. D. Miss. 1996) (citing *Howard v. King*, 707 F. 2d 215, 219-20 (5th Cir. 1983)).
 - () the person appealing is not a pauper;
 - () the person appealing has not complied with the requirements of Rule 24 of the Federal Rules of Appellate Procedure and /or 28 U.S.C. § 1915(a)(1) as ordered by the Court. (See Notice of Deficiency and Order entered on _____).

COA:

- () a Certificate of Appealability is GRANTED on the following issues: _____
- (X) a Certificate of Appealability is DENIED. The Court hereby adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation filed in this case on March 19, 2007, which were accepted by the District Court on May 21, 2007, in support of its finding that Petitioner has failed to demonstrate that reasonable jurists would find it debatable whether the district court was correct in finding that Petitioner failed to exhaust state court remedies. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000).

SIGNED June 7, 2007.


SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE